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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for 14/176,900 and 71247 7590, inventor Gaurav Gupta, attorney THOMAS HORSTEMEYER, LLP, examiner JESSEN, DEREK, art unit 3622, and notification date 09/22/2020.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GAURAV GUPTA, AMAN BINDAL, VIVEK CHAWDA, and
SAKET SAURABH

Appeal 2020-002826
Application 14/176,900
Technology Center 3600

Before KARA L. SZPONDOWSKI, SCOTT B. HOWARD, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–17 and 19–22, which constitute all of the claims pending in this application. Claim 18 has been cancelled. Appeal Br. 24 (Claims App'x). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Amazon Technologies, Inc. Appeal Br. 2.

THE INVENTION

The disclosed and claimed invention is generally directed to product purchasing, and more particularly to enabling merchants to “incentivize the buyer to purchase . . . considered items.” Spec. ¶2.²

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A non-transitory computer-readable medium embodying a program that, when executed by at least one computing device, causes the at least one computing device to at least:

determine a plurality of trigger events associated with a plurality of browsing activities of a user of a client device at an online presence of an electronic commerce system over a computer network, the plurality of browsing activities comprising at least one of: a viewing of an item, a discussion of the item on a forum or message board, and a discussion of the item in a social media service, the item being listed for sale on the electronic commerce system by a merchant device and unpurchased by the user of the client device;

calculate a score for each of a plurality of items in the electronic commerce system as a function of the plurality of trigger events;

select at least one of the items responsive to the score of the at least one of the items exceeding a threshold;

communicate a first notification to the merchant device soliciting a submission of an offer for the at least one of the items, the offer comprising a discount applied to the at least one of the items and a time duration during which the offer is valid;

obtain the offer from the merchant device;

² We refer to the Specification filed Feb. 10, 2014 (“Spec.”); Non-Final Office Action mailed May 1, 2019 (“Non-Final Act.”); Appeal Brief filed Oct. 15, 2019 (“Appeal Br.”); Examiner’s Answer mailed Jan. 27, 2020 (“Ans.”); and the Reply Brief filed Mar. 3, 2020 (“Reply Br.”).

communicate a second notification embodying the offer obtained from the merchant device to the client device; and

wherein the first notification and the second notification comprise a short messaging system (SMS) message, an email message, or content encoded into a network page.

REFERENCES

The prior art relied upon by the Examiner as evidence in rejecting the claims on appeal is:

Barlow	US 2012/0173323 A1	July 5, 2012
Mesaros	US 2012/0203615 A1	Aug. 9, 2012
Letca et al.	US 2013/0254010 A1	Sept. 26, 2013
(“Letca”)		(filed Dec. 27, 2012)
Chow et al.	US 2014/0156420 A1	June 5, 2014
(“Chow”)		(filed Dec. 5, 2012)

REJECTIONS

Claims 1, 3–7, 10–17, 19, and 22 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Chow and Mesaros. Non-Final Act. 3.

Claims 2, 8, 9, and 20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Chow, Mesaros, and Letca. Non-Final Act. 16.

Claim 21 stands rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Chow, Mesaros, Letca, and Barlow. Non-Final Act. 18.

ANALYSIS

Section 103 Rejection

Claim 1 recites (with emphasis added):

determin[ing] a plurality of trigger events associated with a plurality of browsing activities of a user of a client device at an online presence of an electronic commerce system over a computer network, the plurality of browsing activities comprising at least one of: a viewing of an item, a discussion of the item on a forum or message board, and a discussion of the item in a social media service, *the item being listed for sale on the electronic commerce system by a merchant device and unpurchased by the user of the client device.*

Appeal Br. 19 (Claims App'x).

The Examiner finds that Chow teaches items for sale and tracking users' interactions with online detail pages. Ans. 4 (citing Chow Fig. 1, ¶ 24). Specifically, the Examiner finds that Chow's customer writing a review indicating the customer's interest in a particular place teaches "a user using an electronic commerce system to view items for sale (a trigger event)." Non-Final Act. 3-4 (citing Chow ¶¶ 24, 56, 62, Fig. 1). According to the Examiner, Chow's user viewing a details page teaches viewing an item listed for sale and unpurchased by the user of the client device. Ans. 4 (citing Chow ¶ 62).

Appellant argues that Chow does not teach "browsing activity involving an '*item being listed for sale on the electronic commerce system by a merchant device and unpurchased by the user of the client device,*' as recited in claim 1." Appeal Br. 6; *see* Reply Br. 4-7 (emphasis added). Specifically, Appellant argues that the cited sections of Chow do not teach viewing items listed for sale and unpurchased by the user of the client device. *See id.* at 7-8.

We are persuaded by Appellant's argument as the Examiner has not identified sufficient evidence or provided sufficient explanation as to how

the combination of Chow and Mesaros teaches *an item that is listed for sale and is unpurchased by the user of the client device* as claimed.

The cited sections of Chow teach “determining customer valuations, soliciting and receiving merchant bids based on the customer valuations, and delivering promotions and advertisements from the merchants to the customer.” Chow ¶40. The customer valuation includes “obtain[ing] customer interaction data that is associated with a place of business.” *Id.* ¶62. This interaction data “indicate[s] a customer’s interest in a particular place.” *Id.* As an example, “if a customer has viewed a detail page for a place of business multiple times, the system may infer that the customer is interested in the location.” *Id.* An interaction may “indicate[] some type of interest in the merchant by the customer” without knowing “whether the interest is positive or negative, or whether the customer has followed up the browsing of the website with a visit to the merchant and/or a purchase from the merchant.” *Id.* ¶67. In other words, the sections of Chow cited by the Examiner and on the record before us do *not* teach indicating user interest in an *item that is listed for sale by a merchant and is unpurchased by the user*. Instead, Chow teaches a user’s browsing activity indicates the user’s interest (positive or negative) in a merchant or place of business. Chow’s user browsing activity is associated with a merchant’s details page (relating to the merchant or place of business) but not with an item that the merchant has listed for sale that has not yet been purchased by the user.

Therefore, we agree with Appellant that the Examiner’s finding that the combination of Chow and Mesaros teaches the disputed limitation is in error because it is not supported by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (The Examiner’s burden of

proving non-patentability is by a preponderance of the evidence.); *see also In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.”).

Accordingly, we are constrained on the record before us to reverse the Examiner’s rejection of independent claim 1, along with the rejection of independent claims 3 and 15, which recite limitations commensurate in scope to the disputed limitation discussed above, and dependent claims 4–7, 10–14, 16, 17, 19, and 22.

Moreover, because the Examiner has not shown that the additional references cure the foregoing deficiency regarding the rejection of the independent claims 1, 3, and 15, we will not sustain the obviousness rejections of dependent claims 2, 8, 9, 20, and 21.

DECISION

We reverse the Examiner's § 103 rejections of claims 1–17 and 19–22.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3–7, 10–17, 19, 22	103(a)	Chow, Mesaros		1, 3–7, 10–17, 19, 22
2, 8, 9, 20	103(a)	Chow, Mesaros, Letca		2, 8, 9, 20
21	103(a)	Chow, Mesaros, Letca, Barlow		21
Overall Outcome				1–17, 19–22

REVERSED